## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

### Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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### TALLEY *v.* METROPOLITAN LIFE INS. CO.

Jan. 12, 1911.

[69 S. E. 936.]

**1. Insurance (§ 291*)—Life Insurance—Avoidance of Policy for Misrepresentation—Concealment—Effect.**—An applicant for life insurance was asked at his examination, July 1, 1907, the following questions: "Malaria or other fevers? Answer: Yes. Any disease of the chest or lungs? Answer: Yes." And was asked to "give full particulars of every illness you have had since childhood, and name of every physician who has ever attended you or prescribed for you," in answer to which question the applicant stated that in November, 1906, he had a mild attack of urethritis, without complications, which lasted seven days, when he was attended by a physician named; that in December, 1905, he had a mild attack of bronchitis, without complications, lasting three days, in which he had been attended by no physician. Upon this application and an examination by the insurer, a policy for $1,000 was issued to the plaintiff as beneficiary, and the insured died four months thereafter of tuberculosis. In a suit on the policy, there was evidence showing that the insured was attended by two physicians in April and May, 1907, by one of them for a cold; that in June, 1907, before application for the policy in question, the insured consulted a physician and complained of feeling bad, having a cough, fever, loss of appetite and of energy; and that this physician secured a sample of sputum, which he examined, finding therein the germs of tuberculosis, the same examination being made by another physician showing the same effect, which was communicated to the insured; and that at about the time the policy was delivered the insured was in a sanatorium for treatment as a consumptive. Held, that the applicant in his answers had concealed material facts which were tantamount to a fraud on the company, and avoided the policy.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 681-690; Dec. Dig. § 291.* 7 Va.-W. Va. Enc. Dig. 798, et seq.; 9 id. 351.]

**2. Insurance (§ 291*)—Life Insurance—Avoidance of Policy—Misrepresentations—Concealment—Answer Putting Insurer on Inquiry.**—In answer to a question contained in an application for insurance, "Any disease of the chest or lungs?" the applicant answered, "Yes,"

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

and thereafter he was asked, "Give full particulars of every illness you have had since childhood, and the name of every physician who has ever attended you or prescribed for you." Held, that the latter question comprehended the first, and called for particulars under the former categorical answer, and was a sufficient prosecution of the inquiry upon which the insurer was put by the applicant's answer to the former question, and that the applicant's failure to communicate to the insured under this last question the facts material to the risks which were known to him and which would have caused his rejection avoided the policy.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 681-690; Dec. Dig. § 291.* 9 Va.-W. Va. Enc. Dig. 352.]

Error to Circuit Court of City of Richmond.

Action by Lemuella Talley against the Metropolitan Life Insurance Company. Judgment for defendant, and the plaintiff brings a writ of error. Affirmed.

*L. O. Wendenburg,* for plaintiff in error.
*B. Rand. Wellford,* for defendant in error.

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## SOUTHERN RY. CO. *v.* SATTERFIELD'S ADM'X.

Jan. 12, 1911.

[69 S. E. 938.]

**Master and Servant (§ 243*)—Injuries—Contributory Negligence.**—Defendant railroad company's rules required its engineers in approaching a siding to be especially careful as to the positions of switches, and provided that they would be held accountable for passing a switch which was not in the right position for them, and that the absence of switch lights should be considered a danger signal, and that a signal imperfectly displayed or its absence at a place where it was usually shown should be regarded as a stop signal. Held, that whether a switch in yards through which an engineer ran showed a red light, in indicating that the switch was thrown for the siding, requiring him to stop, or, showed no light at all, the engineer was bound to stop under the rules, and he was also bound to stop if the red light was not fully shown to the approaching train because of the switch lever not having been firmly pressed into position, so that he was guilty of negligence in either event, preventing recovery for his death by running through an open switch under such circumstances.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 766, 768; Dec. Dig. § 243.* 9 Va.-W. Va. Enc. Dig. 710, 713.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.